

# Responsibilities of Local Agencies

## OVERVIEW

Effective airport land use compatibility planning is not and cannot be solely a function of airport land use commissions. Indeed, as outlined in Chapter 1, state law specifically limits ALUC authority over various actions which directly affect compatibility. Much of the responsibility for airport land use compatibility clearly remains with local agencies whether in the role of controlling land use or operating an airport.

This local agency responsibility for airport land use compatibility planning is particularly critical in counties which have chosen to utilize the alternative process. As indicated in Chapter 1, establishment of the alternative process in a county only eliminates the requirement for formation of an airport land use commission. The obligation for preparation, adoption, and implementation of an airport land use compatibility plan still remains and, if anything, rests more fully upon local jurisdictions than when an ALUC exists.

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**This chapter focuses on** the obligations and responsibilities of local land use jurisdictions and airport operators with regard to airport land use compatibility. Topics covered include:

- ▶ Making local plans consistent with ALUC plans;
  - ▶ Requirements for submitting local land use actions for ALUC review;
  - ▶ Compatibility planning in counties that do not have an ALUC;
  - ▶ Steps which a local agency must take if it elects to overrule an ALUC action;
  - ▶ The role of airport proprietors in airport land use compatibility planning.
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## LOCAL PLANS CONSISTENCY WITH COMPATIBILITY PLAN

State statutes require that, once an airport land use commission has adopted or amended an airport land use compatibility plan, the county—where it has land use jurisdiction within the airport influence area—and any affected cities must update their general plans and any applicable specific plans to be consistent with the ALUC's plan (Government Code, Section 65302.3). Alternatively, local jurisdictions have the option of taking the special steps necessary to overrule all or part of the ALUC's plan. If a county or city fails to take either action, then it is required to submit all land use development actions involving property within the airport influence area to the ALUC for review (Public Utilities Code, Section 21676.5(a)).

This section addresses the options available to local jurisdictions for bringing their plans into consistency with the compatibility plan. The latter two

topics—requirements for overruling of the ALUC and for submitting actions for ALUC review—are examined later in this chapter.

## General Plan Review and Amendment Process

Two key facets of the process by which a county or city modifies its general plan and any specific plans for consistency with the compatibility plan are important to highlight.

### *Preliminary Review by ALUC*

See discussion in Chapter 4.

In conjunction with an action to prepare or amend a compatibility plan, ALUCs should conduct a preliminary review of affected local plans. The ALUC reviews should identify any obvious direct conflicts between the plans. Equally important to note are significant omissions from the local plans with respect to compatibility criteria and review procedures. While these preliminary reviews are not dictated by state law, practicality and fairness suggests that they be done. With this information in hand, local jurisdictions can better understand the implications that a proposed compatibility plan will have on their own plans. Furthermore, the preliminary review will enable local jurisdictions to be more focused in their efforts to modify their plans. The process of making the necessary changes to general plans and specific plans can thus be eased.

It is important for all parties to recognize, however, that any such reviews are preliminary. Local jurisdictions still must go through the steps of submitting the specific policy language, maps, and other plan components to the ALUC for formal review and approval.

### *180-Day Time Limit*



#### DEPT. OF TRANSPORTATION GUIDANCE

The 180-time limit is a statutory deadline which ALUCs have no authority to modify. ALUCs, though, can agree not to bring action against local governments for taking extra time to amend their affected plans. Any such agreement should be predicated upon those agencies making substantial progress toward the necessary plan changes and not simply ignoring the need to act. ALUCs should recognize that forcing jurisdictions to hold to the 180-day schedule could merely lead those jurisdictions to overrule the ALUC since that process can more easily be accomplished within the time limit.

State law says that a local agency's action to either modify its general plan and applicable specific plans or to take the steps necessary to overrule the ALUC must be taken within 180 days of when an ALUC adopts or amends its compatibility plan (Government Code, Section 65302.3). As a practical matter, this time limit can be difficult to accomplish. Unless the necessary changes to the general and/or specific plan are minor, the time required to draft, circulate, and adopt the modifications together with essential environmental review can easily exceed 180 days. This fact notwithstanding, it is incumbent upon local jurisdictions to move forward as expeditiously as possible to meet the deadline.

The chief consequence of not meeting this deadline is that the ALUC can begin requiring—if it is not already doing so—that all of the jurisdiction's land use actions, regulations, and permits be submitted to the commission for review (Section 21676.5(a)). This requirement can continue until such time as the jurisdiction amends its plans or overrules the ALUC with regard to the local plan's consistency with the commission's compatibility plan.

## Means of Achieving Consistency

As indicated in Chapter 4, making a general plan consistent with the ALUC's compatibility plan involves more than elimination of direct conflicts. Other aspects of compatibility planning also must be addressed. In particular, counties and cities must establish procedures which implement and ensure compliance with compatibility policies. To do this, local plans and/or policies must:

- Delineate the compatibility criteria to be applied to individual development actions;
- Identify the mechanisms to be used to tie the applicable criteria to a particular development; and
- Indicate the procedures to be followed in review and approval of development actions affecting lands within the airport influence area.

An expanded list of the various factors to be considered by local jurisdictions when modifying their plans and policies is included in Table 5A. This checklist is not necessarily all-encompassing. Depending upon the nature of the policies adopted by the ALUC, other factors may need to be addressed and some of those listed may not be applicable.

Local plans can be made consistent with an ALUC's compatibility plan through various means. Which ones are most suitable to a particular county or city depends in part upon the manner in which the compatibility plan criteria and maps are formatted, but even more upon choices to be made by each individual jurisdiction. As discussed in Chapter 3, some compatibility plans rely primarily upon composite, performance-type, criteria while others use list-oriented criteria or detailed land use mapping. The key decision to be made by each affected jurisdiction is whether to fully incorporate compatibility criteria and procedures into their land use plans, ordinances, and regulations and thus mostly internalize the project review process or to defer review of major land use actions to the ALUC.

Five general strategies for fully achieving consistency are outlined below.

- **Incorporate Policies into Existing General Plan Elements**—One method of achieving the necessary planning consistency is to modify existing general plan elements. For example, airport land use noise compatibility policies could be inserted into the noise element, safety policies could be placed into a safety element, and the primary compatibility criteria and associated maps plus the procedural policies might fit into the land use element. With this approach, direct conflicts would be eliminated and the majority of mechanisms and procedures to ensure compliance with compatibility criteria could be fully incorporated into a local jurisdiction's general plan.
- **Adopt a General Plan Airport Element**—Another approach is to prepare a separate airport element of the general plan. Such a format may be advantageous when a community's general plan also needs to address on-airport development and operational issues. Modification of other



As widely applied in airport land use planning, consistency does not require being identical. It means only that the concepts, standards, physical characteristics, and resulting consequences of a proposed action must not conflict with the intent of the law or the compatibility plan to which the comparison is being made.

The primary purpose of the checklist provided in Table 5A is to assist local jurisdictions with necessary modifications and additions to their plans and policies. The checklist is also designed to facilitate ALUC reviews of local plans. The list will need to be modified to reflect the policies of each individual ALUC and is not intended as a state requirement.

See the discussions later in this chapter and in Chapter 4 regarding the implications for project reviews when local plans have not been made fully consistent with the ALUC plan.



Local jurisdictions cannot simply ignore the need to respond to an ALUC's adoption of a compatibility plan. If a county or city neither amends its plans as necessary or overrules the ALUC, it must cooperate with any commission request that all or selected land use actions, regulations, and permits affecting the airport influence area be submitted for review. Furthermore, as noted in Chapter 4, a local jurisdiction's silence on the issue can be interpreted as acceptance of the compatibility criteria which the ALUC has set forth.

plan elements to provide cross referencing and eliminate conflicts would still be necessary.

- **Adopt Compatibility Plan as a Specific Plan**—As mentioned in Chapter 2, some compatibility plans are prepared not as independent ALUC documents or as part of an airport master plan, but jointly with a specific plan for the airport vicinity. Assuming that a plan prepared in this manner addresses all of the important compatibility concerns, it can be adopted in its entirety both by the ALUC as a compatibility plan and the local agency as a specific plan. This option is basically the same as adoption of a general plan airport element.
- **Adopt Compatibility Plan as Stand-Alone Document**—Jurisdictions selecting this option could simply adopt as a local policy document the relevant portions of the compatibility plan. Changes to the community's existing general plan would be minimal. Policy reference to the separate compatibility plan document would need to be added and any direct land use or other conflicts with compatibility planning criteria would have to be removed. Limited discussion of compatibility planning issues could be included in the general plan, but the substance of most compatibility policies would appear only in the stand-alone compatibility plan.
- **Adopt Airport Combining District or Overlay Zoning Ordinance**—Local government adoption of an airport combining district or overlay zoning ordinance is a way of codifying airport compatibility criteria identified only in concept in the general plan or specific plan. Other than where direct conflicts need to be eliminated from the local plans, implementation of the compatibility policies would essentially be accomplished solely through the zoning ordinance. Policy reference to airport compatibility in the general plan could be as simple as mentioning support for the airport land use commission and stating that policy implementation is by means of the combining zone.

This strategy is discussed more extensively in the following section of this chapter.

## Land Use Compatibility Strategies

If airport land use compatibility objectives are to be obtained, counties and cities must take direct actions such as those described here.

Beyond the issue of achieving mandated consistency between local plans and an ALUC's compatibility plan is the broader question of what local governments can do to preserve and enhance compatibility between airport activities and the land uses around the airport. Several strategies are available which can help attain this objective. If the local agency takes land use actions such as the ones discussed here, any inconsistencies between its general plan or specific plan and the ALUC's compatibility plan are likely to be few. These strategies also are appropriate for jurisdictions in counties using the alternative compatibility planning process.

### Land Use Designations

If compatibility between an airport and its surroundings is to be achieved, designation of appropriate land uses—in general plans and specific plans and also in land use zoning ordinances—is essential. This is particularly

This checklist is intended to assist counties and cities with modifications necessary to make their general plans and other local policies consistent with the ALUC's compatibility plan. It is also designed to facilitate ALUC reviews of these local plans and policies. *The list will need to be modified to reflect the policies of each individual ALUC and is not intended as a state requirement.*

For additional  
guidance see:

## COMPATIBILITY CRITERIA

### General Plan Document

The following items typically appear directly in a general plan document. Amendment of the general plan will be required if there are any conflicts with the compatibility plan

Page 4-16

- **Land Use Map**—No direct conflicts should exist between proposed new land uses indicated on a general plan land use map and the ALUC land use compatibility criteria.
  - Residential densities (dwelling units per acre) should not exceed the set limits. Differences between gross and net densities and the potential for secondary dwellings on single parcels (see below) may need to be taken into account.
  - Proposed nonresidential development needs to be assessed with respect to applicable intensity limits (see below).
  - No new land uses of a type listed as specifically prohibited should be shown within affected areas.

Pages 3-3, 7-23

- **Noise Element**—General plan noise elements typically include criteria indicating the maximum noise exposure for which residential development is normally acceptable. This limit must be made consistent with the equivalent compatibility plan criteria. Note, however, that a general plan may establish a different limit with respect to aviation-related noise than for noise from other sources (this may be appropriate in that aviation-related noise is often judged to be more objectionable than other types of equally loud noises).

### Zoning or Other Policy Documents

The following items need to be reflected either in the general plan or in a separate policy document such as a combining zone ordinance. If a separate policy document is adopted, modification of the general plan to achieve consistency with the compatibility plan may not be required. Modifications would normally be needed only to eliminate any conflicting language which may be present and to make reference to the separate policy document.

Page 3-20

- **Secondary Dwellings**—Detached secondary dwellings on the same parcel should be counted as additional dwellings for the purposes of density calculations. This factor needs to be reflected in local policies either by adjusting the maximum allowable densities or by prohibiting secondary dwellings where their presence would conflict with the compatibility criteria.

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- **Intensity Limitations on Nonresidential Uses**—Local policies must be established to limit the usage intensities of commercial, industrial, and other nonresidential land uses. This can be done by duplication of the performance-oriented criteria—specifically, the number of people per acre—indicated in the compatibility plan. Alternatively, local jurisdictions may create a detailed list of land uses which are allowable and/or not allowable within each compatibility zone. For certain land uses, such a list may need to include limits on building sizes, floor area ratios, habitable floors, and/or other design parameters which are equivalent to the usage intensity criteria.

Page 3-6  
Table 9B, page 9-4

- **Identification of Prohibited Uses**—Compatibility plans may prohibit day care centers, hospitals, and certain other uses within much of each airport's influence area. The facilities often are permitted or conditionally permitted uses within many commercial or industrial land use designations. Policies need to be established which preclude these uses in accordance with the compatibility criteria.

TABLE 5A

## General Plan Consistency Checklist

For additional guidance see: Page 9-54	<ul style="list-style-type: none"> <li>➤ <b>Open Land Requirements</b>—Compatibility plan requirements, if any, for assuring that a minimum amount of open land is preserved in the airport vicinity must be reflected in local policies. Normally, the locations which are intended to be maintained as open land would be identified on a map with the total acreage within each compatibility zone indicated. If some of the area included as open land is private property, then policies must be established which assure that the open land will continue to exist as the property develops. Policies specifying the required characteristics of eligible open land also must be established.</li> </ul>
Page 3-21	<ul style="list-style-type: none"> <li>➤ <b>Infill Development</b>—If a compatibility plan contains infill policies and a jurisdiction wishes to take advantage of them, the lands which meet the qualifications must be shown on a map.</li> </ul>
Page 9-54	<ul style="list-style-type: none"> <li>➤ <b>Height Limitations and Other Hazards to Flight</b>—To protect the airport airspace, limitations must be set on the height of structures and other objects near airports. These limitations are to be based upon Part 77 of the Federal Aviation Regulations, but may include exceptions for objects on high terrain if provided for in the compatibility plan. Restrictions also must be established on other land use characteristics which can cause hazards to flight (specifically, visual or electronic interference with navigation and uses which attract birds). Note that many jurisdictions have already adopted an airport-related hazard and height limit zoning ordinance which, if up to date, will satisfy this consistency requirement.</li> </ul>
Pages 3-3, 7-34	<ul style="list-style-type: none"> <li>➤ <b>Noise Insulation Requirements</b>—Some compatibility plans call for certain buildings proposed for construction within high noise-impact areas to demonstrate that they will contain sufficient sound insulation to reduce aircraft-related noise to an acceptable level. These criteria apply to new residences, schools, and certain other buildings containing noise-sensitive uses. Local policies must include parallel criteria.</li> </ul>
Pages 3-4, 7-38	<ul style="list-style-type: none"> <li>➤ <b>Buyer Awareness Measures</b>—As a condition for approval of development within certain compatibility zones, some compatibility plans require either dedication of an avigation easement to the airport proprietor or placement on deeds of a notice regarding airport impacts. If so, local jurisdiction policies must contain similar requirements. Compatibility plans also may encourage, but should not require, local jurisdictions to adopt a policy stating that airport proximity and the potential for aircraft overflights be disclosed as part of real estate transactions regarding property in the airport influence area.</li> </ul>
Page 3-21	<ul style="list-style-type: none"> <li>➤ <b>Nonconforming Uses and Reconstruction</b>—Local jurisdiction policies regarding nonconforming uses and reconstruction must be equivalent to or more restrictive than those in the compatibility plan, if any.</li> </ul>

TABLE 5A, CONTINUED

*For additional guidance see:*

## REVIEW PROCEDURES

In addition to incorporation of ALUC compatibility criteria, local jurisdiction implementing documents must specify the manner in which development proposals will be reviewed for consistency with the compatibility criteria.

*Page 4-6*

- **Actions Always Required to be Submitted for ALUC Review**—State law specifies which types of development actions must be submitted for airport land use commission review. Local policies should either list these actions or, at a minimum, note the jurisdiction's intent to comply with the state statute.

*Page 4-8*

- **Other Land Use Actions Potentially Subject to ALUC Review**—In addition to the above actions, compatibility plan may identify certain major land use actions for which referral to the ALUC is dependent upon agreement between the jurisdiction and the ALUC. If the jurisdiction fully complies with all of the items in this general plan consistency check list or has taken the necessary steps to overrule the ALUC, then referral of the additional actions is voluntary. On the other hand, a jurisdiction may elect not to incorporate all of the necessary compatibility criteria and review procedures into its own policies. In this case, referral of major land use actions to the ALUC is mandatory. Local policies should indicate the jurisdiction's intentions in this regard.

*Pages 4-8, 5-10*

- **Process for Compatibility Reviews by Local Jurisdictions**—If a jurisdiction chooses to submit only the mandatory actions for ALUC review, then it must establish a policy indicating the procedures which will be used to assure that airport compatibility criteria are addressed during review of other projects. Possibilities include: a standard review procedure checklist which includes reference to compatibility criteria; use of a geographic information system to identify all parcels within the airport influence area; etc.

*Page 4-7*

- **Variance Procedures**—Local procedures for granting of variances to the zoning ordinance must make certain that any such variances do not result in a conflict with the compatibility criteria. Any variance which involves issues of noise, safety, airspace protection, or overflight compatibility as addressed in the compatibility plan must be referred to the ALUC for review.

*Page 5-8*

- **Enforcement**—Policies must be established to assure compliance with compatibility criteria during the lifetime of the development. Enforcement procedures are especially necessary with regard to limitations on usage intensities and the heights of trees. An airport combining district zoning ordinance is one means of implementing enforcement requirements.

TABLE 5A, CONTINUED



true in developing areas—good planning today can avoid significant conflicts later. The value of designating compatible land uses in built-up areas should not be overlooked, however. Appropriate designations can serve to identify already incompatible uses as nonconforming and thus limit the potential for expansion or modification of the uses to worsen the incompatibility. Designating compatible uses also can encourage eventual change of currently incompatible uses to ones which are better suited to the environs of an airport.

### ***Overlay Zones or Combining Districts***

For the purposes of airport land use compatibility planning, land use plan and zoning designations as commonly adopted by counties and cities have a notable shortcoming. Seldom do they have an aviation orientation or address the specific issues of compatibility with aviation activities (i.e., noise and safety). The Table 5A checklist of factors essential to making a local general plan or specific plan consistent with a compatibility plan highlights many of the reasons why consistency is seldom achieved without explicit consideration of aviation issues.

Possible components of an airport compatibility combining zoning ordinance are listed in Table 5B. The compatibility concerns which form the basis for these components are described as well.

One way local governments can overcome the lack of aviation orientation of basic land use designations is to adopt an airport compatibility overlay zone or combining district ordinance. A combining district can supplement local land use designations by adding specific noise and, often more importantly, safety criteria (e.g., maximum number of people permitted on the site, site design and open space criteria, height restrictions, etc.) applicable to future development in the airport vicinity. Project review procedures and other implementation mechanisms can also be defined. Geographically, the combining district should cover at least the entire airport influence area as defined by the ALUC in its compatibility plan.

An airport overlay zoning ordinance has several important benefits. Most importantly, it permits the continued utilization of the majority of the design and use guidelines contained in the existing general plan and zoning ordinance. At the same time, it provides a mechanism for implementation of restrictions and conditions that may apply to only a few types of land uses within a given land use category or zoning district. This avoids the need for a large number of discrete zoning districts. It also enables general plans and specific plans to attain consistency with a compatibility plan through reference to basic compatibility criteria rather than through redefinition of existing land use designations.

### ***Buyer Awareness Measures***

Buyer awareness measures serve to alert prospective airport vicinity residents about the airport and its impacts. Three basic forms of buyer awareness measures are most common in airport land use compatibility practice:

- Avigation easements;
- Recorded deed notices; and
- Real estate disclosure statements.



An airport compatibility combining zoning ordinance might include some or all of the following components:

- **Airspace Protection**—A combining district can establish restrictions on the height of buildings, antennas, trees, and other objects as necessary to protect the airspace needed for operation of the airport. These restrictions should be based upon the current version of Federal Aviation Regulations (FAR) Part 77, Objects Affecting Navigable Airspace, Subpart C. Additions or adjustment to take into account instrument approach (TERPS) surfaces should be made as necessary. Provisions prohibiting smoke, glare, bird attractions, and other hazards to flight should also be included.
- **FAA Notification Requirements**—Combining districts also can be used to ensure that project developers are informed about the need for compliance with the notification requirements of FAR Part 77. Subpart B of the regulations requires that the proponent of any project which exceeds a specified set of height criteria submit a Notice of Proposed Construction or Alteration (Form 7460-1) to the Federal Aviation Administration prior to commencement of construction. The height criteria associated with this notification requirement are lower than those spelled out in Part 77, Subpart C, which define airspace obstructions. The purpose of the notification is to determine if the proposed construction would constitute a potential hazard or obstruction to flight. Notification is not required for proposed structures that would be shielded by existing structures or by natural terrain of equal or greater height, where it is obvious that the proposal would not adversely affect air safety.
- **State Regulation of Obstructions**—State law prohibits anyone from constructing or altering a structure or permitting an object of natural growth to exceed the heights established by FAR Part 77, Subpart C, unless the FAA has determined the object would not or does not constitute a hazard to air navigation (Public Utilities Code, Section 21659). Additionally, a permit from the Department of Transportation is required for any structure taller than 500 feet above the ground unless the height is reviewed and approved by the Federal Communications Commission or the FAA (Section 21656).
- **Designation of High Noise-Impact Areas**—California state statutes require that multi-family residential structures in high-noise exposure areas be constructed so as to limit the interior noise to a Community Noise Equivalent Level of no more than 45 dB. A combining district could be used to indicate the locations where special construction techniques may be necessary in order to ensure compliance with this requirement. The combining district also could extend this criterion to single-family dwellings.
- **Maximum Densities/Intensities**—Airport noise and safety compatibility criteria are frequently expressed in terms of dwelling units per acre for residential uses and people per acre for other land uses. These standards can either be directly included in a combining zone or used to modify the underlying land use designations. For residential land uses, the correlation between the compatibility criteria and land use designations is direct. For other land uses, the method of calculating the intensity limitations needs to be defined. Alternatively, a matrix can be established indicating whether each specific type of land use is compatible with each compatibility zone. To be useful, the land use categories need to be more detailed than typically provided by general plan or zoning ordinance land use designations.
- **Open Areas for Emergency Landing of Aircraft**—In most circumstances in which an accident involving a small aircraft occurs near an airport, the aircraft is under control as it descends. When forced to make an off-airport emergency landing, pilots will usually attempt to do so in the most open area readily available. To enhance safety both for people on the ground and the occupants of aircraft, airport compatibility plans often contain criteria requiring a certain amount of open land near airports. These criteria are most effectively carried out by planning at the general or specific plan level, but may also need to be included in a combining district so that they will be applied to development of large parcels. Adequate open areas can often be provided by clustering of development on adjacent land.
- **Areas of Special Compatibility Concern**—A significant drawback of standard general plan and zoning ordinance land use designations is that they can be changed. Uses that are currently compatible are not assured of staying that way in the future. Designation of areas of special compatibility concern would serve as a reminder that airport impacts should be carefully considered in any decision to change the existing land use designation. [A legal consideration which supports the value of this concept is that down-zoning of a property to a less intensive use is becoming more difficult. It is much better not to have inappropriately up-zoned the property in the first place.]
- **Real Estate Disclosure Policies**—The geographic extent and specific language of recommended real estate disclosure statements can be described in an airport combining zone ordinance.

TABLE 5B

## Possible Airport Combining Zone Components

While ALUCs may define policies establishing how and where each of these measures should be used, the effectiveness of each is enhanced by actions which local governments can take. Chapter 3 contains a discussion of the applicability of each of these measures to accomplishment of airport land use compatibility planning objectives.

## SUBMITTING PROJECTS FOR REVIEW

### Reviews by Airport Land Use Commissions

Also see Chapter 4 for a discussion of this topic from the perspective of ALUCs. Note that local agencies which are airport proprietors also are obligated to submit certain airport plans for ALUC review.

In counties where an airport land use commission exists, the obligations of counties and cities with regard to submitting land use projects and other actions for the commission's review are well defined in the state law. Local jurisdictions cannot legally ignore these requirements. If they do, ALUCs can initiate the review process on their own and seek a writ of mandate to force the local jurisdiction to provide the necessary project information.

The types of land use projects to be submitted depends upon:

- Whether a compatibility plan has been adopted by the ALUC;
- What action the county or city has taken with regard to making its general plan or specific plan consistent with the compatibility plan;
- Whether the project requires an amendment to the local general plan, specific plan, or zoning ordinance; and
- Whether voluntary agreements for the review of projects have been established.

Any environmental documents prepared in conjunction with these actions also should be submitted for ALUC review.

The requirements for project review can be summarized as follows:

- **General Plans and Specific Plans**—As discussed in the preceding chapter, counties and cities must refer any proposal to adopt or amend a general plan or specific plan to the ALUC for review if the proposal involves land within an airport influence area defined by the ALUC (Section 21676(b)). This requirement applies regardless of whether the proposal has community-wide applicability or affects only a single parcel (unless the parcel is not in the airport influence area). It also applies both to actions initiated by the local agency or a property owner and to amendments proposed for the purpose of making a general plan or specific plan consistent with an ALUC's compatibility plan.
- **Ordinances and Regulations**—Proposed zoning ordinances and building regulations also must be submitted for ALUC review before being acted upon by the local agency if they affect the compatibility of land uses located within an airport influence area (Section 21676(b)).
- **Individual Development Projects**—Once an ALUC has adopted a compatibility plan, requirements for local jurisdictions to submit individual development proposals for review depends upon whether the county or city has acted to make its plans consistent with the ALUC's plan or to overrule the commission. Prior to when the local jurisdiction takes a con-

For example, proposed ordinances or regulations involving allowable land uses, densities, structure heights, or sound insulation must be submitted for ALUC review. Architectural standards, sign regulations, and other such matters which clearly do not have airport land use implications need not be submitted.

sistency or overruling action, all individual development projects must be submitted for review (Section 21676.5(a)). This requirement includes referral of actions which are ministerial unless the ALUC has indicated it does not want to receive them (see discussion in Chapter 4). Referral of all project proposals also continues to be mandatory if the local jurisdiction has opted not to fully incorporate essential compatibility criteria and procedures into local plans and policies, but has merely eliminated the direct conflicts with the compatibility plan.

Submittal of individual development projects becomes voluntary only when: the local plans have been made fully consistent with the ALUC's plan or the local jurisdiction has overruled the ALUC; and the action does not involve a general plan, specific plan, or zoning amendment previously reviewed by the ALUC. Even in these circumstances, however, local agencies are encouraged to form an agreement with the airport land use commission for review of major land use development project proposals—those which could have airport land use compatibility implications. A factor to be borne in mind with voluntary project-review agreements is that the ALUC's review is advisory only. The overruling procedures which must be followed with respect to mandatory reviews are not in effect.

- **Airport Plans**—Proposed airport master plans, expansion of an existing airport, and plans for construction of a new airport (or heliport) must be submitted to the ALUC for review in accordance with Sections 21676(c), 21664.5, and 21661.5, respectively. This referral requirement is independent of whether the ALUC has previously adopted a compatibility plan or the county or city has taken action with regard to the consistency of its general plan or specific plan.

## Reviews by Other Agencies

In addition to being reviewed by the airport land use commission, certain airport-vicinity development actions also must be submitted to other agencies for review. Counties and cities should be aware of the extent to which these review requirements apply within their jurisdictions and inform project proponents accordingly.

### **Federal Aviation Administration**

The FAA's involvement in the review of local projects derives both from its authority over navigable airspace and its function as a funding agency for airport planning studies and airport improvement projects.

- **Aeronautical Studies**—As noted earlier in this chapter, Federal Aviation Regulations Part 77 requires that anyone proposing to construct an object which could affect the navigable airspace around an airport submit information about the proposed construction to the FAA. The FAA then conducts an aeronautical study, the outcome of which is a determination as to whether the object would be a potential hazard to air navigation. If the proposed object is concluded to pose a hazard, the FAA may object to its

The FAA's review does not consider the type of land use involved. Neither does the FAA approve or disapprove the proposal; it merely evaluates and recommends.

construction, examine possible revisions of the proposal to eliminate the problem, require that the object be appropriately marked and lighted as an airspace obstruction, and/or initiate changes to the aircraft flight procedures for the airport so as to account for the object.

- **Airport Improvement Program Grants**—Through its Airport Improvement Program (AIP) grants, the FAA currently funds 90% of the cost of most planning studies and eligible improvement projects at airports in California. As a condition for receipt of a grant, an airport project sponsor must assure the FAA that it will take appropriate actions “to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft.” The FAA does not routinely review land use development near an airport with respect to this grant assurance obligation; it only becomes involved when a problem is brought to its attention. The FAA does, however, review airport layout plans and plans for federally funded construction to ensure compliance with Federal Aviation Regulations and airport design standards.

### ***California Department of Transportation***

Through its Division of Aeronautics, the California Department of Transportation has review and, in certain cases, permitting authority with respect to several types of airport and airport-related land use actions. These include:

- **Airport Permits**—The Department of Transportation has authority under the State Aeronautics Act to issue permits for the approval of airport sites and the operation of airports (Section 21662). Moreover, other than for a few limited exceptions (a private-use facility, for example), it is unlawful for any political subdivision or any person to operate an airport unless the airport has a valid state permit (Section 21663). The law spells out the conditions for issuance or amendment of an airport permit.
- **Regulation of Obstructions**—A state permit is also required for construction of objects that would affect the navigable airspace. These objects include:
  - Any structure taller than 500 feet above ground level, unless the height of the structure is required to be approved by the Federal Communications Commission or the Federal Aviation Administration (Section 21656).
  - Any structure or object of natural growth which would exceed the height limits specified in Federal Aviation Regulations Part 77, Subpart C, unless the FAA has determined that the object’s construction, alteration, or growth would not constitute a hazard to air navigation or otherwise create conditions unsafe for air navigation (Section 21659).
- **School Site Reviews**—Two sections of the Education Code (17215 and 81033) require that the Department of Transportation investigate and make recommendations regarding acquisition of property for school and community college sites near airports. Specifically, before a district can acquire property for a school or community college site that would be

The contents of the Education Code sections are included in Appendix A.

within two miles of an airport runway or potential runway included in an airport master plan, the Department must investigate and submit a report of its findings regarding that acquisition. This requirement also applies to additions to an existing site. The primary factors considered in the analysis of a site by the Department's Division of Aeronautics are aircraft accident exposure and aircraft noise. Division staff will review the airport compatibility plan, if one exists, and will ask for comments from the appropriate ALUC as a part of its investigation. Input from an ALUC and compatibility criteria established in an adopted plan weigh heavily in the Department's final report and recommendation about the suitability of the proposed acquisition for use as a school or community college.

- **Building Site Reviews**—A review process similar to that for school sites is established by a section of the Aeronautics Act (Public Utilities Code, Section 21655). This section requires that the Department of Transportation be notified of any state agency proposal to acquire a site for a state building if such site is within two miles of an airport runway. The Department of Transportation, Division of Aeronautics then investigates the site and reports its recommendations to the agency.
- **California Environmental Quality Act Reviews**—Another avenue through which the Division of Aeronautics becomes involved in local projects is through the California Environmental Quality Act (CEQA). As a responsible agency having permitting authority for airports, the Division of Aeronautics reviews and comments upon environmental impact documents prepared for airport master plans and airport improvement projects. The Division of Aeronautics also frequently comments upon environmental documents associated with local general plans, specific plans, and individual development projects near airports.

Legislation enacted in 1994 requires lead agencies to use the *Airport Land Use Planning Handbook* as a "technical resource" when assessing the airport-related noise and safety impacts of projects in the vicinity of airports (Public Resources Code, Section 21096).

### **Regional Planning Agencies**

Most of the single- or multi-county regional planning agencies in the state have responsibilities for reviewing grant applications and setting regional priorities for the use of federal and state grant funds. These agencies also frequently review and comment upon airport master plans and environmental documents for airport plans and improvements.

### **Airport Proprietors**

No state laws require the participation of airport proprietors in the review of proposed land use development in the airport vicinity. These agencies are nevertheless often the most knowledgeable about the effects which nearby development would have upon the operation of their airports.



DEPT. OF TRANSPORTATION  
**GUIDANCE**

Proponents of major development projects and the local agencies which have land use jurisdiction over airport environs are urged to seek the input of airport management when preparing community plans and plans for development.

## **COMPATIBILITY PLANNING IN COUNTIES WITHOUT ALUCs**

As a result of either a special exemption or through establishment of the alternative process, several counties in the state do not have an airport land





#### DEPT. OF TRANSPORTATION GUIDANCE

Under the law, the Division of Aeronautics has the responsibility for reviewing and approving the processes by which a county and each affected city in the county establish and implement compatibility planning under the alternative process. To be acceptable, an alternative process must, at a minimum, address all of the topics associated with making local plans consistent with an ALUC plan. Additional procedures special to the alternative process also must be defined as indicated here.

Irrespective of requirements of the Aeronautics Act, state general plan requirements for noise and safety elements arguably require some level of airport compatibility planning by counties and cities.

use commission. As emphasized in Chapter 1, however, the lack of an ALUC does not eliminate the responsibilities of counties and cities to engage in airport land use compatibility planning. If anything, not having an ALUC increases the obligations of local agencies in this regard. These obligations extend both to preparation of compatibility plans and to the subsequent review of individual development proposals.

In accordance with state law (Section 21670.1(c)(2)), establishment of the alternative process in a county requires the county and “the appropriate affected cities having jurisdiction over an airport” to adopt processes which provide for:

- Preparation, adoption, and amendment of a compatibility plan for each public-use airport in the county and designation of an agency responsible for these actions;
- Public and agency notification regarding compatibility plan preparation, adoption, or amendment;
- Mediation of disputes regarding preparation, adoption, or amendment of compatibility plans;
- Amendment of general plans and specific plans to be consistent with the compatibility plans.

## Compatibility Policies

Jurisdictions within counties without ALUCs (other than counties which are exempt) still must adopt airport land use compatibility plans or policies for the portion of any public-use airport’s environs which lies within their borders. Compatibility planning for private-use airports is not required. Compatibility policies can be adopted as separate documents equivalent to ones adopted by ALUCs. Alternatively, compatibility planning policies can be folded into the general plan or other local policy documents as outlined earlier in this chapter with respect to making a general plan consistent with a compatibility plan.

Whichever option is chosen, the same concerns as would be found in a compatibility plan adopted by an ALUC must be explicitly addressed. Compatibility criteria must be established and any internal conflicts between the criteria and land use designations or other elements of the general plan must be resolved.

## Project Reviews

In addition to adoption of compatibility criteria and designation of appropriate land uses for the environs of each airport, jurisdictions in counties without ALUCs must adopt project review procedures and mechanisms necessary for ensuring compliance with the compatibility criteria. Specific attention should be given to the following:

- **Special Review Process**—Proposals for major land use development within the airport influence area should specifically be reviewed for consistency with the airport land use compatibility criteria. A list of the types of projects subject to this review should be established. When action on



the proposal involves discretionary approval by the county or city, specific *findings* should be made that either (1) the proposal is consistent with the compatibility criteria or (2) other overriding land use factors are of higher priority to the community.

- **Interagency Communication and Cooperation**—Among the functions provided by ALUCs, a particularly important one is to facilitate coordination of planning between agencies having land use jurisdiction around airports and agencies which own the airports. This function still needs to be accomplished when an ALUC does not exist. Formal interagency agreements should be established between the affected entities for each airport. These agreements should refer to the compatibility plan and the project review process, as well as to any adopted airport plans. Information on land use development in the vicinity of an airport should be provided to the agency (or private party) owning the airport for review and comment. Also, airport operators should inform surrounding jurisdictions about any proposed changes in airport development or operation which could affect surrounding land. Methods for resolving conflicts also must be identified.

## OVERRULING ALUC DECISIONS

Various sections of the airport land use commission statutes provide for local agencies to overrule ALUC decisions on land use matters and airport master plans. The overruling process involves three mandatory steps:

- The holding of a public hearing (except when a the ALUC disapproves a county or city action prior to having adopted a compatibility plan);
- The making of specific findings that the action proposed is consistent with the purposes of the ALUC statute; and
- Approval of the proposed action by a two-thirds vote of the agency's governing body.

Two particular aspects of the overruling process warrant further examination. One is the issue of what constitutes valid findings under the provisions of the law. The other involves the subsequent implications of an overruling action.

### Findings

A requirement for a local agency to make specific findings in conjunction with a decision to overrule an airport land use commission action is included in six separate sections of the ALUC statutes. In each case, the law provides that the findings must show that the proposed local agency action "is consistent with the purposes of this article stated in Section 21670." A county or city cannot simply overrule an ALUC decision without first documenting the basis for the overruling action and relating that basis directly to the purposes for which the ALUC statutes were adopted. The purpose of findings is to assure compliance with state law.

The Aeronautics Act primarily refers to the term "overrule," although "override" is used in some sections. In common practice, the two terms are often used interchangeably. The critical point is that any local agency overruling of an ALUC must include the three steps listed here.

Note that a 1992 opinion of the State Attorney General concluded that a two-thirds vote of the entire membership of a city council or board of supervisors is not necessary for an overruling; a two-thirds vote of the members constituting a quorum is sufficient.

A document prepared by the Governor's Office of Planning and Research (OPR), *Bridging the Gap: Using Findings in Local Land Use Decisions* (the 1989 version remains current as of late 2001), examines the subject of findings at length. The purpose here is only to highlight key factors, particularly as they apply to local agency overruling of ALUC decisions.

These comments do not constitute a legal opinion regarding the requirements for use or adequacy of findings. Local agencies should consult with their respective legal counsels on these matters.

The necessity for adequate findings to accompany a local agency's overruling of an ALUC was affirmed in a 1992 court case, *California Aviation Council v. City of Ceres*. In this case the court found that the Ceres city council had merely referred to the ALUC statutes and then concluded that the proposed land uses minimized public exposure to excessive noise and safety hazards in the airport area. The findings did not document the critical links between the proposal, the finding, and the facts.

### ***The Concept of Findings***

Requirements for a government entity to make findings of fact when taking certain actions appear in many parts of state law. Also numerous court cases have dealt with the issues of findings and their adoption. The most important case regarding the use of findings in local land use decisions was *Topanga Association for a Scenic Community v. County of Los Angeles* [(1974) 11 Cal. 3d 506]. In its ruling on this case, the Court defined findings, explained their purposes, and outlined when findings are needed in making local land use decisions.

Findings were defined in the decision as legally relevant conclusions that explain the decision-making agency's method of analyzing facts, regulations, and policies and the rationale for making the decisions based on the facts involved. Findings are used to show how local decision-makers arrived at their decision based on facts and established policies.

The *Topanga* court also outlined five purposes for making findings. Findings should:

- Provide a framework for making principled decisions, enhancing the integrity of the administrative process;
- Help make analysis orderly and reduce the likelihood that the agency will randomly leap from evidence to the conclusions;
- Enable the parties to determine whether and on what basis they may seek judicial review and remedy;
- Apprise a reviewing court of the basis for the agency's action; and
- Serve a public relations function by helping to persuade the parties that administrative decision making is careful, reasoned, and equitable.

In its review of findings requirements, OPR offers several guidelines regarding what constitutes sound, legally sufficient findings. Perhaps most basic among these guidelines is that *findings must be substantive*, not just bare conclusions or recitations of the law: "Generally, findings are not sufficient if they merely recite the very language of the local ordinance or state statute that requires them." In other words, findings must "bridge the analytical gap between raw data and ultimate decision." Findings made by a local commission composed of laymen can be informal, however. They are not required to meet the standards of judicial findings of fact.

### ***Findings Accompanying an Overruling of an ALUC Decision***

In general, California law does not clearly distinguish between situations which require findings and those which do not. However, with respect to a local agency's action to overrule an ALUC decision, the law is quite specific. Any such action—whether it involves a general plan, an individual development proposal, an airport master plan, or other local project reviewed by the ALUC—must be accompanied by specific findings of fact supported by substantial evidence.

The essential substance of the findings which accompany a local agency overruling of an ALUC decision is indicated in the ALUC statutes. The find-

ings must demonstrate that the proposed action “is consistent with the purposes...” of the statutes as set forth in Section 21670. Examination of Section 21670(a) indicates that five separate purposes for the legislation are stated:

See Appendix A of this *Handbook* for the complete text of Section 21670(a).

- “...to provide for the orderly development of each public use airport in this state...”
- “...to provide for the orderly development of...the area surrounding these airports so as to promote the overall goals and objectives of the California airport noise standards...”
- “...to provide for the orderly development of...the area surrounding these airports so as...to prevent the creation of new noise and safety problems.”
- “...to protect the public health, safety, and welfare by ensuring the orderly expansion of airports...”
- “...to protect the public health, safety, and welfare by...the adoption of land use measures that minimize the public’s exposure to excessive noise and safety hazards within areas around public airports to the extent that these areas are not already devoted to incompatible uses.”

Although findings do not need to address each of these purposes point by point, it is essential that, collectively, all of the purposes be addressed. The following paragraphs outline possible approaches to demonstrating a proposed action would indeed be consistent with these purposes.

► **Providing for Orderly Development of the Airport**—The findings should document:

- How the local agency has considered any adopted long-range development plans that may exist for the airport;
- How the local agency plans support development of the airport over at least the next 20 years; and
- How local land use planning and zoning actions would serve to protect the approaches to the airport runways.

When a master plan has been adopted for an airport, the local agency’s analysis should focus on the relationship between the proposed local action and the airport’s plan. In instances where a master plan for the airport does not exist (or was never adopted), the ALUC is required to have obtained Division of Aeronautics approval to use an airport layout plan as the basis for preparation of the commission’s compatibility plan. Under those circumstances, the state-approved plan should be the basis for the local agency’s analysis.

► **Relationship to California Airport Noise Standards**—The state airport noise standards are set forth in Title 21 of the California Code of Regulations. These standards are “designed to cause the airport proprietor, aircraft operator, local governments, pilots, and the [Department of Transportation] to work cooperatively to diminish noise problems.”

In addressing the question of consistency of the proposed action with the state noise standards, the local agency should refer specifically to the

content of the noise element of its own general plan. Section 65302(g) of the Government Code requires community general plans to include a noise element. This element is required to describe the community noise environment in terms of both near and long-term noise exposure contours for various noise sources. Airports are among the noise sources that should be considered in the noise element. The findings should:

- Document any inconsistencies between noise element policies and noise compatibility criteria in the ALUC compatibility plan and attempt to resolve why the differences exist;
- Show how noise element policies will assure conformance with the state noise airport standards; and
- Identify any measures to be incorporated into local development to mitigate existing and foreseeable airport noise problems.

➤ **Preventing Creation of New Noise and Safety Problems**—The preceding item covers the topic of noise. With respect to safety, reference should be made to both the land use and the safety elements of the general plan. Aircraft accident location data and analyses presented in Chapters 8 and 9 of this *Handbook* also can provide factual support for the findings. The findings should:

- Document any inconsistencies between the proposed land use action and safety compatibility criteria in the ALUC compatibility plan;
- Describe the measures taken to assure that risks—both to people and property on the ground and to the occupants of aircraft—associated with the land use proposal are held to a minimum; and
- Indicate that the proposed land use action falls within a level of acceptable risk considered to be a community norm.

➤ **Protecting Public Health, Safety, and Welfare by Ensuring Orderly Expansion of the Airport**—This purpose is essentially the same as the first one listed above.

➤ **Minimizing the Public's Exposure to Excessive Noise and Safety Hazards**—Key words in this component of the law's purpose are *minimize* and *excessive*. The phrase “to the extent such areas are not already devoted to incompatible uses” is significant as well.

The language used in the statute implies a quantitative assessment of noise exposure and safety hazards. The purpose of the statute is not merely to reduce the public's exposure to noise and safety hazards, but to minimize exposure in areas with excessive noise or safety concerns. To adopt a finding demonstrating consistency with this purpose, the local agency first must determine whether the existing noise exposure or safety hazards are excessive.

- If existing noise and safety hazards are not excessive, then the actions taken by the local agency must “prevent the creation of new noise and safety problems” (see the third bullet above).
- If the existing exposure is excessive, the local agency would have to show how its action in overruling an ALUC determination of inconsis-

tency nonetheless *minimizes* additional exposure to those noise and safety concerns that have been identified.

- Finally, the local agency needs to show the extent to which land uses in the area in question are already incompatible with airport operations, and how an action to overrule would not create a new incompatible use, or would not expose additional persons or property to noise and safety hazards associated with existing compatible uses.

## Implications of Local Agency Overruling

The state law indicates several implications of a local agency's decision to overrule an ALUC determination:

- **Action Approved**—The most obvious outcome of a local agency's overruling is that the proposed action—approval of a plan, ordinance, project, or whatever—takes effect just as if the ALUC had approved it or found it consistent with the compatibility plan.
- **Subsequent Reviews**—If a local agency adopts or amends a general plan or specific plan for the airport area by overruling the ALUC, then subsequent ALUC review of individual development projects related to that overruling become voluntary (Section 21676.5(b)).
- **Airport Proprietor's Immunity**—Two sections of the law establish that, if a county or city overrules an airport land use commission with respect to a publicly owned airport not operated by that county or city, the agency operating the airport “shall be immune from liability for damages to property or personal injury caused by or resulting directly or indirectly from the public agency's decision to override the commission's action or recommendation” (Sections 21678 and, with slightly different wording, 21675.1(f)). The law does not indicate who will become liable under these circumstances.
- **Lack of Notification to ALUC**—Another common situation which occurs when a county or city is contemplating overruling an ALUC is the lack of notification to the commission. From the perspective of ALUCs and airport managers, one of the significant shortcomings of the state law is that it does not require a local agency to notify the commission of a pending overruling action. Frequently, the ALUC and its staff do not become aware that an overruling has occurred until after the fact, if at all. Giving the commission an opportunity to state its case at a public hearing and challenge unsupported findings would potentially avoid some of the resulting incompatibilities and would further the objectives of the statutes.

It is perhaps of significance to note that the immunity provision of the state law has not been tested in court.

## ROLE OF AIRPORT PROPRIETORS

Apart from their obligation to submit airport master plans, construction plans of new airports, and plans for airport expansion (when an amended

airport permit is required) for airport land use commission review, airport proprietors also have a more basic role in airport land use compatibility matters. There are three facets to this role. One arises because of the relationship between the airport proprietor's actions and the substance of the ALUC compatibility plan for the airport. A second is the airport proprietor's direct responsibility for fostering compatibility between the airport and its environs. Lastly, airport proprietors have a community relations role which can have implications on land use compatibility issues.

### **Influence on ALUC Compatibility Plan**

By law, an airport land use commission cannot establish policies governing the operation of any airport. Nevertheless, because an ALUC's compatibility plan for an airport must be based upon the long-range plans for that airport, the manner in which the airport is or will be constructed and operated clearly has a major bearing on the compatibility plan. The airport's ability to affect the location and magnitude of airport impacts can make development compatible in places where it would otherwise not be acceptable.

Some examples of this relationship are obvious. The configuration of the existing and proposed airport runways is a major determinant of noise and safety compatibility zone locations. Other influences on the compatibility plan are usually more subtle and may or may not be taken into account in the ALUC's formulation of the compatibility plan. As mentioned in Chapter 3, one airport operational procedure which can have an important influence on a compatibility plan is the location of traffic patterns. If a traffic pattern exists only on one side of a runway, whether for compatibility purposes or other reasons, fewer restrictions on land uses may be necessary on the non-traffic-pattern side.

### **Actions to Enhance Land Use Compatibility**

Most airport proprietors understand that they too have a responsibility for promoting airport land use compatibility. They cannot rely solely upon actions taken by the airport land use commission or the agency having jurisdiction over local land uses. In locations where the need for compatible land uses is particularly critical, airports should take direct action to prevent or mitigate problems.

Airports need direct control over lands critical to airport operations because of the limitations of land use planning and zoning measures for airport land use compatibility purposes. As essential as the designation of appropriate land uses is to airport land use compatibility, reliance on the normal form of these documents does not provide adequate long-term compatibility assurance. Among the important limitations which need to be recognized are:

- **Ease of Change**—Nothing permanently locks in a land use designation. Future local legislative bodies can change the established designations—by overruling the ALUC, if necessary. Such changes especially can occur if the land changes jurisdiction (e.g., as a result of annexation).



- **Restrictiveness**—Land use designations are limited as to how restrictive they can be. If they are deemed to eliminate all reasonable economic use of private property, they can be considered an unfair taking and result in inverse condemnation. Especially in areas near ends of runways, the restrictions may need to be more extensive or demanding than can be accomplished by land use designations.
- **Lack of Retroactiveness**—Designating an area for a different use than the one already existing may encourage change over the long run, but it does not directly eliminate existing incompatible uses.

For additional discussion of inverse condemnation, see Chapter 3.

Given these limitations of land use planning and zoning measures, the only certain means available to airport proprietors for protecting against incompatible development in the airport vicinity is to directly control the property most critical to compatibility. In most instances, this means acquiring the property. The acquisition can be outright, fee simple title acquisition or the acquisition of an easement granting specified rights to the airport.

From the airport's perspective, the chief advantage of property acquisition is to provide long-term assurance of land use compatibility. If the airport owns the property or an easement, maintenance of compatibility is not dependent upon the success of ALUC actions or the understanding and cooperation of the local jurisdiction having land use powers. There are also disadvantages, however; cost being the major one.

Airport property ownership is most critical for the runway protection zones. These areas immediately beyond the runway ends should be clear of structures and be used only for agricultural or other low-intensity use. As discussed in Chapter 3, airport land use commissions are limited as to how far they can go to restrict land uses without the restriction being legally deemed to be a taking. The zoning authority of local agencies is similarly constrained.

In noise- and/or safety-impacted locations beyond the runway protection zones, property acquisition may also be the only effective means of land use control. This can be particularly true in situations where the local government having authority over land uses is not the same one that owns the airport. In such cases, the interests and objectives of the land use jurisdiction often differ from those of the airport agency.

### ***Acquisition of Fee Simple Title***

Airport acquisition of fee simple title is not only the most absolute means of controlling a property's use, it is the only type of action that ensures the conversion of existing legal, but incompatible, land uses to uses more compatible with airport activities.

Acquisition of property for approach protection purposes is eligible for federal grants under the Federal Aviation Administration Airport Improvement Program. FAA guidelines state that:

“...land interest is eligible which is necessary to restrict the use of land in the approach and the transitional zones (the dimensions as cited in

Among the assurances that an airport proprietor must give to the FAA before receiving a project grant is to take appropriate action “to restrict the use of land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations.” When the agency owning the airport also has jurisdiction over surrounding land uses, zoning may suffice, especially for lands outside the runway protection zones. However, when the jurisdictions are different or where unprotected land is within a runway protection zone, direct acquisition may be the only effective means of carrying out the grant assurances.

the applicable Advisory Circulars) to activities and purposes compatible with normal airport operations as well as to meet current and anticipated development at the airport.” (FAA–1989a)

The FAA’s *Airport Design* Advisory Circular indicates that airports should own areas necessary to mitigate potential incompatible land uses where adequate control cannot be provided by zoning, easements, or other means. At a minimum, runway protection zones and areas adjacent to the runway (locations where the Federal Aviation Regulations Part 77 transitional surface is less than 35 feet above the adjacent runway surface elevation) should be on airport property.

Depending upon the urgency, fee title acquisition can take one of these forms:

- **Condemnation**—Public agencies have the authority to use eminent domain proceedings to condemn property needed for public purposes. For airport compatibility reasons, condemnation is usually reserved for situations in which a significant compatibility conflict exists or is expected to soon occur if action is not taken.
- **Purchase when on Market**—A less adversarial approach to fee title acquisition is for the airport to determine which properties it is interested in buying, then purchase them when the owners place them on the market. A potential difficulty of this approach is that the airport may not have or be able to obtain the necessary funding in a timely manner. (Unlike with construction projects, however, FAA grant funding for property acquisition can be obtained retroactively.) It is also possible that another buyer could offer more money than the airport could pay.
- **Purchase Assurance**—A variation of purchasing property when it comes on the market is for the airport to establish a purchase assurance agreement with the owners of the property it wishes to buy. This agreement would give the landowner assurance of a buyer when the owner chooses to sell and, simultaneously, would give the airport the option of whether or not to make the acquisition (a *right of first refusal*).

Also see the discussion of the appropriateness of aviation easements as buyer awareness measures earlier in this chapter and in Chapter 3.

#### **Standard Aviation Easement Rights**

As described in Chapter 3, a standard aviation easement conveys the following property rights from the property owner to another entity, usually the airport owner:

- A right-of-way for free and unobstructed passage of aircraft through the airspace over the property at any altitude above an imaginary surface specified in the easement (usually set in accordance with FAR Part 77 criteria).

### **Acquisition of Easements**

Easements in general are a less-than-fee form of property ownership. They convey specified rights from the owner of the underlying parcel to the party which owns the easement. Two related, but different, types of easements are sometimes acquired by airports as means of controlling certain types of land use activities. One form, an aviation easement, is relatively common. The other, approach protection easements, have only recently begun to be acquired and are still relatively rare.

- **Aviation Easements**—Aviation easements have historically been used to establish height limitations, prevent other flight hazards, and permit noise impacts and other impacts related to the overflight of aircraft. Airport acquisition of an aviation easement is sometimes an alternative to fee simple title acquisition of property within or near the runway pro-

tection zones, especially when outright acquisition is not affordable or otherwise practical. In these instances, the property involved is usually already developed. Airport proprietors often require property owners to dedicate an avigation easement to the airport in exchange for installation of noise insulation paid for by the airport (usually at least in part with the assistance of the FAA).

A standard avigation easement usually involves conveyance of the property rights listed in the adjacent sidebar. Sometimes, though, only part of these rights are obtained. Most common is an Overflight Easement addressing the noise and other impacts of aircraft passage over a property, but not restricting the height of objects on the property.

- **Approach Protection Easements**—A significant shortcoming of standard avigation easements as a means of assuring airport land use compatibility is that they do not specifically regulate the types of land uses allowed on the property. As long as the height limits and other conditions are adhered to, any land use is permitted. Approach protection easements go a step farther by combining standard avigation easement provisions with the acquisition of specific development rights to the property.

Approach protection easement acquisition is particularly suitable for areas which: (1) are not so highly impacted that fee simple title acquisition is necessary; (2) are currently in agricultural or other compatible use; and (3) would be a significant problem if converted to an incompatible use. Future uses of the property would be restricted to specified types of agriculture or other compatible land uses. New residential development would be excluded.

Because the rights to ownership and limited use of the property remain with the landowner, the cost of acquiring approach protection easements is usually less than that of fee title. Airports can obtain approach protection easements either through direct acquisition or, when necessary, by acquiring fee title then reselling the property while retaining the easement.

## Community Relations

Among the most effective means airports have available with which to minimize airport/community conflicts is to reach out to local residents by means of a public relations program. Generally, the more informed that people are about an airport and its activities, the less likely they are to complain about it. Possible elements of a communication program might include:

- Creation of a telephone hot line.
- Periodic publication of a newsletter about the airport.
- Talks to local civic groups.
- Offering tours of the airport.
- Establishment of an airport/community advisory committee.

Additionally, a real estate disclosure program could be implemented, at least in an informal manner, by the airport proprietor. An airport cannot, on its own, include such a program as part of an overlay zoning ordinance

- A right to subject the property to noise, vibration, fumes, dust, and fuel particle emissions associated with normal airport activity.
  - A right to prohibit the erection or growth of any structure, tree, or other object that would enter the acquired airspace.
  - A right-of-entry onto the property, with appropriate advance notice, for the purpose of removing, marking or lighting any structure or other object that enters the acquired airspace.
  - A right to prohibit electrical interference, glare, misleading lights, visual impairments, and other hazards to aircraft flight from being created on the property.
- A sample of a typical avigation easement is included in Appendix D.

The concept of *approach protection easements* is very similar to that of *conservation easements* used for the purpose of preserving agricultural land.

affecting surrounding land use jurisdictions. Nevertheless, airport proprietors can assemble information about the airport, its activity levels and traffic patterns, and any other factors which may influence land use compatibility. This information could then be distributed to local real estate agents and be made available to airport area residents.